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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/576,686	05/23/2000	Paul B. Darcy	MFCP.70154	3725

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SHOOK, HARDY & BACON L.L.P.  
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EXAMINER
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JABR, FADEY S

ART UNIT	PAPER NUMBER
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3628

MAIL DATE	DELIVERY MODE
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07/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/576,686	<b>Applicant(s)</b> DARCY ET AL.	
	<b>Examiner</b> Fadey S. Jabr	<b>Art Unit</b> 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-20,30,32-35 and 43-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,3-20,30,32-35 and 43-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of Claims***

Claims 1, 3-20, 30, 32-35, and 43-45 remain pending and are again presented for examination.

### ***Response to Arguments***

1. Applicant's arguments filed 8 May 2007 have been fully considered but they are not persuasive.
2. Applicant argues the combination of Farrar and FERIA fails to teach or suggest, "determining a monetary cost to a provider for each resource and determining the monetary cost for the computer transaction based on a total monetary service provider cost for each utilized resource." Examiner notes that Farrar discloses the costs of various plans are calculated and compared. Then, the operator can select the lowest cost plan for execution (C. 2, lines 7-9). In the broadest reasonable interpretation, the lowest cost plan for execution is the plan that utilizes the least amount of resources, physical resources that cost the service provider monetarily, therefore having a lower monetary cost. Farrar discloses that the cost of a plan may be described in terms of the total physical resources of the computer engaged in implementing the query (C. 4, lines 17-22). It is well known in the art that physical resources have a monetary cost associated with them to purchase, and therefore a provider supplying the services of the resources will monetarily charge for the use of those resources. For example, Farrar discloses, "Each SimpleCostVector object measures an amount of resource usage. To determine the less expensive of two Cost objects, one must specify, not only the two Cost objects, but also a

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performance goal; two costs may compare differently depending on the specified performance goal (C.5, lines 27-31). Further, it is old and well known in the art at the time of the applicant's invention that computing services, e.g. network usage, has a monetary cost associated with the amount of usage which is also based on the physical resources utilized to provide the network usage. Service provider basing costs on the physical resources utilized to provide the services is a basic exercise in the business environment. Further, Feria teaches calculating costs attributed to the use of comparing equipment and services (Abstract). The costs Feria discusses are base costs, ongoing costs, direct and indirect costs, etc., which all happen to be monetary costs associated with providing the necessary resources to provide the computing services. Thus, the combination of Farrar and Feria teaches determining a monetary cost for the utilized resources.

3. Applicant argues the Examiner fails to establish a *prima facie* case of obviousness. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Farrar discloses a database query cost model optimizer, while Feria teaches a method for determining the total cost incurred per users of the information technology (IT) in a distributed computing environment. Both references are concerned with determining costs associated with the use of computing services. Therefore, a *prima facie* case has been established.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims **1, 3-4, 7-10, 13-20, 30, 32-35, and 43-45** rejected under 35 U.S.C. 103(a) as being unpatentable over Farrar et al., U.S. Patent No. 6,330,552 B1 in view of Feria et al., U.S. Patent No. 7,020,621 B1.

As per **Claims 1, 19-20, 30, 34-35, 44 and 45**, Farrar et al. discloses a method and system for

accurately estimating the cost of a database query (computer transaction) comprising:

- identifying two or more information technology services utilized to execute the computer transaction (C. 4, lines, 17-22, 45-54, C. 5, lines 27-67).

Farrar et al. fails to *explicitly* disclose the information technology services include telephone services, network access services, maintenance services, software services, support services, and hardware services. However, Farrar et al. discloses using a network connection (network access services) to carry out computer instructions (C. 4, lines 45-54). Further, Feria et al. teaches determining the cost per user of an information technology system. The method includes obtaining base costs, ongoing direct costs, and ongoing indirect costs (C. 1, lines 40-42). Moreover, Feria et al. teaches support service costs, network availability and help desk call rates (C. 11, lines 21-44, C. 14, lines 51- C. 15, line 42). Therefore, it would have been obvious to

one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Farrar et al. and include taking into account several service costs as taught by FERIA et al., because it allows for evaluating and assessing where cost efficiencies can be achieved throughout the entire system.

Farrar et al. further discloses determining a monetary service providing cost associated with the two or more services utilized to execute the transaction, wherein determining the monetary service providing cost comprises,

- identifying each resource utilized to provide the two or more services, (C5, lines 27-67, C. 6, lines 56-61) and
- assigning a portion of the monetary service providing cost of each resource to the computer transaction; (C5, lines 27-67, C. 6, lines 56-61) and
- summing the monetary service providing cost for each resource to determine the monetary cost for the computer transaction in order to pass the monetary cost for the computer transaction to a user executing the computer transaction (C. 6, lines 56-61).

As per **Claim 3**, Farrar et al. discloses wherein equipment is a utilized resource and the monetary service providing cost includes an equipment cost and wherein the determining step includes calculating the equipment cost as a percentage of an overall equipment cost for equipment utilized to execute the transaction (C. 4, lines 17-22, C. 5, lines 27-67).

As per **Claim 4**, Farrar et al. discloses wherein software is a utilized resource and the monetary service providing cost includes a software cost and wherein the determining step

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includes calculating the software cost as a percentage of an overall software cost for the equipment utilized to execute the transaction (C. 3, lines 22-25).

As per **Claim 7 and 33**, Farrar et al. discloses wherein the determining step includes determining a cost for a level of quality of the one or more services utilized to execute the transaction (C. 6, lines 56-61).

As per **Claim 8**, Farrar et al. discloses wherein the step of determining a cost for the quality of the service includes determining a cost for the availability of the one or more services (C. 6, lines 9-19).

As per **Claim 9-10**, Farrar et al. fails to *explicitly* disclose wherein the availability cost includes an *equipment* cost and wherein the step of determining a cost for the availability includes calculating the equipment cost as a percentage of an overall equipment cost for the equipment utilized to provide the availability of the one or more services. However, Farrar et al. discloses the elapsed time for page faults depends on available *physical memory* and the amount of normal memory used to execute the query (C. 6, lines 9-19). Further, Feria et al. discloses measuring unavailability of the network, either due to planned interruptions, or to technology failures (equipment, software, etc.) (C. 14, lines 51-C 15, line 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Farrar et al. and include taking into account equipment and software costs when determining availability costs as taught by Farrar et al. and Feria et al., because it allows

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for evaluating and assessing where cost efficiencies can be achieved throughout the entire system.

As per **Claim 13**, Farrar et al. discloses wherein the step of determining a cost for the quality of the service includes determining a cost of the response time of the one or more services (C. 3, lines 16-32).

As per **Claim 14**, Farrar et al. discloses wherein the response time cost includes an equipment cost and wherein the step of determining a cost for the response time includes calculating the equipment cost as a percentage of an overall equipment cost for equipment utilized to provide the response time of the one or more services (C. 5, lines 25-67).

As per **Claim 15**, Farrar et al. discloses wherein the response time cost includes a software cost and wherein the step of determining a cost for the response time includes calculating the software cost as a percentage of an overall software cost for the equipment utilized to provide the response time of the one or more services (C. 5, lines 25-67).

As per **Claim 18**, Farrar et al. discloses wherein the determining step includes determining a cost for a level of quality of the one or more services utilized to execute the transaction, the method further including the step of combining the monetary service providing cost and the quality cost to define the monetary computer transaction cost (C. 6, lines 56-61).



As per Claim 33, Farrar et al. discloses wherein the step of determining a quality cost includes determining an availability cost and a response time (C. 6, lines 9-19, 56-61).

As per Claim 43, Farrar et al. discloses identifying a fixed cost resource and attributing a portion of a total monetary service providing cost for the fixed cost resource to the computer transaction (C. 4, lines 7-22), and summing a monetary service providing cost for the fixed cost resource and a monetary service providing cost for the variable cost resource to determine the monetary cost for the computer transaction (C. 6, lines 56-61).

Farrar et al. fails to *explicitly* disclose identifying variable cost resources and determining a portion of the variable cost resources to conduct the transaction. However, Farrar et al. discloses the total cost of a plan may be measured in terms of the time required to produce the first and last row of data resulting from the query (C. 4, lines 7-22). The time required to produce the first or last row of data varies depending on the resources used in the plan. Moreover, Feria et al. teaches obtaining base costs, ongoing direct costs and ongoing indirect costs (C. 1, lines 40-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Farrar et al. and include direct and indirect costs when determining a total cost in a computer environment as taught by Farrar et al. and Feria et al., because it allows for evaluating and assessing where cost efficiencies can be achieved throughout the entire system.

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6. Claims **5-6, 11-12, 16 and 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrar et al., U.S. Patent No. 6,330,552 B1 in view of Feria et al., U.S. Patent No. 7,020,621 B1 as applied to claim 1 above, and further in view of Jou et al., U.S. Patent No. 5,822,750.

As per **Claims 5-6, 11-12, 16 and 17**, Farrar et al. fails to disclose wherein personnel (facility) is a utilized resources and the monetary service providing cost includes a personnel (facility) cost and wherein the determining step includes calculating the personnel (facility) cost as a percentage of an overall personnel (facility) cost for maintaining the software and the equipment utilized to execute the transaction. However, Jou et al. teaches databases users typically seek to retrieve data in the least possible amount of time, to minimize the cost of the query in terms of the required personnel and the processing time (C. 2, lines 10-22). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Farrar et al. and Feria et al. and include personnel and facility costs and any other resource costs that would factor into the cost of a transaction as taught by Jou et al., because it allows for evaluating and assessing where cost efficiencies can be achieved throughout the entire system.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadey S. Jabr whose telephone number is (571) 272-1516. The examiner can normally be reached on Mon. - Fri. 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Fadey S Jabr  
Examiner  
Art Unit 3628

FSJ

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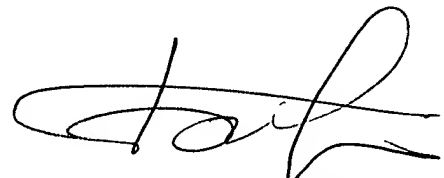
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Hand delivered responses should be brought to the Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314



IGOR N. BORISSOV  
PRIMARY EXAMINER